REMARKS

The above-identified application is United States application serial number 10/438,716 filed on May 14, 2003. Claims 1-39 are pending. Claims 2, 8, 9, and 23-27 are withdrawn from consideration. Claims 1, 3-7, 10-22 and 28-39 are rejected.

I. Provisional Obviousness-Type Double Patenting Rejection over Appl. No. 10/057,295

In the Office Action, the Examiner provisionally rejected Claims 1-21 on obviousness-type double patenting grounds over Claims 1-39 of commonly-owned Appl. No. 10/057,295; claims 1-3, 6-19 and 22-34 of commonly-owned Appl. No. 10/038,098; and claims 1-24 of commonly-owned U.S. Pat. 6,738,933. In response, Applicant is filing terminal disclaimers herewith to overcome these rejections.

II. Anticipation Rejection over Forman

Applicants respectfully submit that the anticipation rejection of Claims 1-21 over U.S. Pat. 6,178,449 to Forman et al. ("Forman") is improper because, among other reasons, Forman does not explicitly or inherently disclose all of the limitations of any independent claim. Examples of specific claim limitations that are not disclosed by Forman are provided below.

Independent Claim 1

Claim 1 has been amended to include the features of claim 2 (now canceled) and recites

> "the agent computer is configured to initiate execution of the transaction by sending to the web site system a request message that contains encoded data indicating that the transaction should be monitored by the probe, and wherein the probe is responsive to the encoded data by monitoring execution of the transaction on the application server."

In connection with these limitations, the Examiner points to the abstract, Figures 3, 4, 6, 7, and col. 5, lines 23-52 of Forman. None of these cited portions, however, teaches or suggest that "the agent computer is configured to initiate execution of the transaction by

sending to the web site system a request message that contains encoded data indicating that the transaction should be monitored by the probe". In contrast, Forman teaches that application instances must register with a transaction time agent as the network computing environment is powered-up and/or initialized. (Forman col. 10 lines 6-15). The application instances that request transaction time monitoring during registration are automatically monitored during transactions. (Forman col. 10 lines 6-35). Accordingly, claim 1 is distinguishable from Forman because Forman requires registration to initialize transaction monitoring as well as transaction initiation that is separate from registration, whereas claim 1 initiates execution of the transaction and indicates that the transaction should be monitored in the same request message.

Independent Claim 11

With respect to Claim 11, Forman does not disclose various features of claim 11, e.g.,

> "execution of a user transaction that invokes an application on the application server,...wherein the user transaction is an agent-generated transaction that includes encoded information that causes the probe to monitor execution of the application".

In contrast, Forman teaches that application instances must register with a transaction time agent as the network computing environment is powered-up and/or initialized. (Forman col. 10 lines 6-15). The application instances that request transaction time monitoring during registration are automatically monitored during transactions. (Forman col. 10 lines 6-35). Accordingly, claim 11 is distinguishable from Forman because Forman requires registration to initialize transaction monitoring as well as transaction initiation that is separate from registration, whereas the user transaction of claim 11 both invokes an application and includes encoded information that causes the probe to monitor execution of the application.

Independent Claim 19

With respect to claim 19, Forman does not disclose

> "the agent component specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site, and wherein the probe is responsive to the encoded information by monitoring execution of the transaction to generate application server performance data for the transaction."

In contrast, Forman teaches that application instances must register with a transaction time agent as the network computing environment is powered-up and/or initialized. (Forman col. 10 lines 6-15). The application instances that request transaction time monitoring during registration are automatically monitored during transactions. (Forman col. 10 lines 6-35). Accordingly, claim 19 is distinguishable from Forman because Forman requires registration to initialize transaction monitoring as well as transaction initiation that is separate from registration, whereas the agent component of claim 19 specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site.

Dependent Claims

Because Forman does not disclose all of the limitations of any independent claim, the anticipation rejections of the independent and dependent claims are improper. In addition, the dependent claims recite numerous additional limitations that are not disclosed by Forman.

III. Anticipation Rejection over Fraenkel

Applicants respectfully submit that the anticipation rejection of Claims 1-21 over U.S. Pub. 2002/0198985 to Fraenkel et al. ("Fraenkel") is improper because, among other reasons, Fraenkel does not explicitly or inherently disclose all of the limitations of any independent claim. Examples of specific claim limitations that are not disclosed by Fraenkel are provided below.

Independent Claim 1

Claim 1 has been amended to include the features of claim 2 (now canceled) and recites

> "the agent computer is configured to initiate execution of the transaction by sending to the web site system a request message that contains encoded data indicating that the transaction should be monitored by the probe, and wherein the probe is responsive to the encoded data by monitoring execution of the transaction on the application server."

In connection with these limitations, the Examiner points to the abstract, Figures 1, 17, 20, 21, 25, and paragraphs 11 and 49 of Fraenkel. None of these cited portions, however, teaches or suggest that "the agent computer is configured to initiate execution of the transaction by sending to the web site system a request message that contains encoded data indicating that the transaction should be monitored by the probe". In contrast, the cited portions of Fraenkel teach that prior tools and services do not provide a mechanism for identifying the source of performance problems. (Fraenkel para. 11). The other cited portion of Fraenkel is the opening paragraph of the detailed description that states that various inventive features will be described as part of a common monitoring system, but those skilled in the art will recognize that many of the features can be practiced or used independently of others, and that the description is intended only to illustrate certain embodiments of the invention and not to limit the scope of the invention. (Fraenkel paragraph 49). Accordingly, claim 1 is distinguishable from Fraenkel because Fraenkel requires use of a Setup Wizard to initialize transaction schedules and monitoring via a user interface. (Fraenkel paragraphs 104-114). Once the setup process is completed, the monitoring session continues indefinitely until halted or terminated by the user. (Fraenkel paragraph 114). The user interface described in paragraphs 110 and 111 of Fraenkel uses different screens to initialize the transactions to be monitored and schedules for the transactions, therefore the same request message is not used to initiate execution of the transaction and indicate that the transaction should be monitored in the same request message, as required by claim 1.

Independent Claim 11

Fraenkel does not disclose various features of claim 11, e.g.,

> "execution of a user transaction that invokes an application on the application server,...wherein the user transaction is an agent-generated transaction that includes encoded information that causes the probe to monitor execution of the application".

In contrast, Fraenkel requires use of a Setup Wizard to initialize transaction schedules and monitoring via a user interface. (Fraenkel paragraphs 104-114). Once the setup process is completed, the monitoring session continues indefinitely until halted or terminated by the user. (Fraenkel paragraph 114). The user interface described in paragraphs 110 and 111 of Fraenkel uses different screens to initialize the transactions to be monitored and schedules for the transactions, therefore Fraenkel does not teach a user transaction that is an agent-generated transaction that includes encoded information that causes the probe to monitor execution of the application, as required by claim 11.

Independent Claim 19

With respect to Claim 19, Fraenkel does not disclose an agent and a probe that operate as follows: "the agent component specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site". In contrast, Fraenkel requires use of a Setup Wizard to initialize transaction schedules and monitoring via a user interface. (Fraenkel paragraphs 104-114). Once the setup process is completed, the monitoring session continues indefinitely until halted or terminated by the user. (Fraenkel paragraph 114). The user interface described in paragraphs 110 and 111 of Fraenkel uses different screens to initialize the transactions to be monitored and schedules for the transactions, therefore Fraenkel does not teach "the agent component specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site", as required by claim 19.

Dependent Claims

Because Fraenkel does not disclose all of the limitations of any independent claim, the anticipation rejections of the independent and dependent claims are improper. In addition, the dependent claims recite numerous additional limitations that are not disclosed by Fraenkel.

IV. Request for Interview

Applicants' representative would welcome the opportunity to discuss the pending claims and the cited art with the Examiner by telephone. Accordingly, if any issues remain that can potentially be resolved by telephone, the Examiner is invited to call the undersigned attorney of record at his direct dial number of 949-350-7301.

V. Conclusion

In view of the foregoing, Applicants submit that the obviousness-type double patenting and anticipation rejections are improper, and request that these rejections be withdrawn.

Respectfully submitted,
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